

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WHITING-TURNER CONTRACTING
COMPANY,

Plaintiff,

vs.

FIRST MOUNTAIN BANCORP,

Defendant.

Case No.: 2:13-cv-00916-GMN-PAL

ORDER

Pending before the Court is the Motion to Lift Stay and Enter Final Judgment (ECF No. 21) filed by Plaintiff Whiting-Turner Contracting Company ("Whiting-Turner") on November 21, 2014. In ruling on the motion, the Court finds as follows:

1. The Default (ECF No. 9) of First Mountain Bancorp was entered in this action on June 21, 2013.
2. Whiting-Turner's Application for Default Judgment (ECF No. 17) was filed on September 17, 2013.
3. On July 28, 2014, Magistrate Judge Leen filed her Report of Findings and Recommendation (ECF No. 18) recommending the granting of Whiting-Turner's Application for Default Judgment (ECF No. 18).
4. On July 28, 2014, Whiting-Turner, Elevator Specialists of Carolina, Inc., Lori Diaz (Surety) and First Mountain Bancorp entered into a written settlement agreement in a North Carolina action regarding various disputes among those parties, including the claims in this action.
5. Pursuant to the settlement agreement, First Mountain Bancorp was to pay the settlement amount to Whiting-Turner on or before August 27, 2014, but dismissal of the North

1 Carolina action and this action were not to be filed and releases were not to be effective
2 until 91 days after payment by First Mountain Bancorp of the settlement amount.

3 6. The settlement agreement also provides:

4 Any and all claims which PLAINTIFF(S) and DEFENDANT(S)
5 may have against one another, described in the litigation pending in
6 Onslow County Superior Court, case number 13 CVS 2058 will,
7 after distribution of funds and execution, filing and delivery of the
8 appropriate release and dismissal with prejudice or consent
9 judgment, be settled and discharged completely.
10 (emphasis added)

11 Accordingly, the claims in the North Carolina and Nevada actions were not settled until
12 distribution of funds and execution, filing and delivery of the appropriate release and
13 dismissal or consent judgment.

14 7. On August 13, 2014, Whiting-Turner filed a Status Report (ECF No. 19) advising the
15 Court of the settlement and requesting the Court to delay any further action unless
16 notified that further action was necessary.

17 8. On September 10, 2014, this Court entered Order Accepting Report & Recommendation
18 of Magistrate Judge Leen (ECF No. 20) in which the Court:

- 19 a. noted that the court had been advised that settlement was contingent upon First
20 Mountain Bancorp making future payment;
21 b. accepted and adopted the Report and Recommendation (ECF No. 18) in full;
22 c. granted Plaintiffs Motion for Default Judgment (ECF No. 17);
23 d. stayed this action until November 26, 2014 or until the parties request that the
24 stay be lifted; and
25 e. ordered the Clerk not to enter final judgment until the stay has been lifted.

9. No monies have been paid to Whiting-Turner as required by the settlement agreement
and the time for payment expired on August 27, 2014. Accordingly, North Carolina
counsel for Whiting-Turner notified North Carolina counsel for Elevator Specialists of

1 Carolina, Inc., Lori Diaz and First Mountain Bancorp that the settlement agreement is
2 null and void and without effect and that Whiting- Turner is proceeding to ask this Court
3 to lift the stay and enter judgment against First mountain Bancorp in the amount of
4 \$494,533.22 plus post-judgment interest.

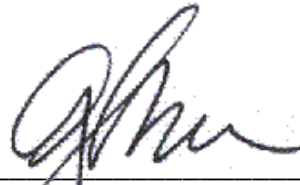
5 10. Whiting-Turner then filed the present motion and served a copy on First Mountain
6 Bancorp. No response has been filed by First Mountain Bancorp.

7 Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff Whiting-Turner's Motion to Lift Stay and
9 Enter Final Judgment (ECF No. 21) is **GRANTED**. The stay in this matter is lifted and
10 judgment is entered against Defendant First Mountain Bancorp in the amount of \$494,533.22
11 plus post-judgment interest.

12 The Clerk of the Court shall enter judgment accordingly, and thereafter close the case.

13 **DATED** this 23rd day of January, 2015.

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17 Gloria M. Navarro, Chief Judge
18 United States District Judge
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